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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of PARAMDEEP and MONINDER TANK.	
PARAMDEEP TANK, Appellant, v. MONINDER S. TANK, Respondent.	D066177 (Super. Ct. No. D545308)

APPEAL from a judgment of the Superior Court of San Diego County, Cindy Dobler Davis, Judge. Affirmed in part, reversed in part, remanded with directions.

Patrick L. McCrary for Appellant.

Moninder S. Tank, in pro. per., for Respondent.

Appellant Paramdeep Tank appeals a family court's order denying her petitions for dissolution of marriage, child and spousal support, and custody and visitation of the children. She argues the court had subject matter jurisdiction over her claims and

therefore it erred by granting the motion to quash service of the summons and petition filed by respondent Moninder Tank. We affirm the court's order as to the petition for dissolution of marriage and child and spousal support; however, we reverse as to the child custody and visitation matter, and remand with directions as set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

In Paramdeep's[1] October 3, 2013 petition seeking dissolution of marriage, she stated she and Moninder married in 1997 and separated in August 2013. Their two children were twelve and nine years old.

On the same day, Paramdeep filed a separate petition for child custody, child and spousal support and visitation. She asserted in a supporting declaration that "[s]ince the children were born, I have stayed home due to their history of health conditions and also [Moninder's] job has changed every 3-5 years which involved moving from state to state. Stability for children is my primary concern." Paramdeep stated she was responsible for "all [the children's] needs, school, afterschool activities, volunteer [parent-teacher association], church, vacations, [doctors' visits]." She stated Moninder visited the children "only on weekend . . . every 2-3 months." Paramdeep declared the children had lived in California the past five years and attended school here. She was studying at a community college in San Diego and previously worked in San Diego as a teacher's aide.

Moninder moved to quash service of the summons and petitions, stating in a declaration that in 2011 he had moved to Georgia for work, and in 2012 his only ties to

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1 We refer to the parties by their first names to avoid confusion and no disrespect is intended.

California were family visits "once in a while." He claimed he had no property or other ties in California. He stated he had worked in Virginia since October 2012, and he and Paramdeep signed a one-year lease on a Virginia apartment in July 2013. Thereafter, the family moved to Virginia and Paramdeep and the children enrolled in classes there. Moninder asserted he was registered to vote in Virginia, where he also had a driver's license. Moninder claimed that in October 2013, Paramdeep took the children back to California without informing him.

At a February 21, 2014 hearing, the court granted Moninder's motion to quash: "[Paramdeep] did, in fact, relocate to Virginia . . . from . . . July 10 through October 3[, 2013]. All of the personal property was moved. [¶] The children changed schools. It wasn't just a vacation to Virginia. So that time frame did break up that six-month time period immediately prior to the filing of the petition on October 3, 2013. So on that grounds, the court will find [Paramdeep] failed to meet the mandatory requirements of Family Code[2] section 2320." Following that ruling, Paramdeep asked the court for "access to the community property," alleging Moninder was not providing her financial support. The court responded, "Unfortunately, I don't have jurisdiction. . . . The way this petition was filed and the timing of this petition—this petition is now gone."

2 Statutory references are to the Family Code unless otherwise stated.

DISCUSSION

I.

The Family Court Lacked Jurisdiction over the Dissolution Petition Under Section 2320

On appeal, Paramdeep asserts she "does not raise any issue with the findings of fact expressed by the court in it [*sic*] granting of the motion to quash." Nevertheless, she contends the court erroneously dismissed her petition for dissolution of marriage because even if the family court lacked personal jurisdiction over Moninder, it had subject matter jurisdiction over the matters raised in her petition. Paramdeep specifically argues: "The court, if it felt the necessity, could have ordered a dismissal of the cause of action for dissolution and ordered Paramdeep to amend her petition removing the request for a dissolution of marriage. The amendment would have requested a legal separation."

" 'A judgment decreeing the dissolution of marriage may not be entered unless one of the parties to the marriage has been a resident of this state for six months and of the county in which the proceeding is filed for three months next preceding the filing of the petition.' " (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 156; § 2320.) Whether the residency requirement has been met is a question of fact and the burden of establishing residence is on the party asserting it. (*In re Marriage of Dick*, at p. 153.) Under the applicable substantial evidence appellate review standard, " '[our] task begins and ends with a determination as to whether there is any substantial evidence in the record to support' the trial court's finding." (*Id*., at p. 156.)

Paramdeep concedes, and we agree, Moninder's declaration provided substantial support for the family court's factual finding he had lived outside of California during the six months before Paramdeep filed her petitions. Accordingly, under section 2320's plain terms, the court did not have personal jurisdiction over Moninder, and therefore it did not err in granting the motion to quash as to the dissolution of marriage petition.

Paramdeep contends the court could have treated her petition for dissolution as one filed under section 2321, which provides: "In a proceeding for legal separation of the parties in which neither party, at the time the proceeding was commenced, has complied with the residence requirements of Section 2320, either party may, upon complying with the residence requirements, amend the party's petition or responsive pleading in the proceeding to request that a judgment of dissolution of the marriage be entered. The date of the filing of the amended petition or pleading shall be deemed to be the date of the commencement of the proceeding for the dissolution of the marriage for the purposes only of the residence requirement of Section 2320." We conclude the court did not err by ruling on the specific petition for dissolution that Paramdeep brought. Further, Paramdeep has not contended the family court foreclosed her from relying on section 2321 and filing an amended petition upon her satisfying section 2320's residency requirement. As far as we can tell from the record, that option is still available to her.

II.

The Family Court Lacked Jurisdiction over Child and Spousal Support Issues

With no citation to the record or law, Paramdeep contends the family court had personal jurisdiction over Moninder, who "had lived in the State of California and filed

taxes in California just the year prior to the filing of the action by Paramdeep. Also, Moninder had been involved in a physical confrontation with Paramdeep just six months prior to the filing of the petition. This matter may be returned to the trial court on this issue of California's personal jurisdiction over Moninder but the facts are so strong that Moninder's claim can be dismissed by this court as a matter of law." In light of the uncontested facts supporting the family court's ruling, we conclude the family court did not err in finding it lacked personal jurisdiction over Moninder.

When a defendant moves to quash based on lack of personal jurisdiction, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062 (*Snowney*).) If the plaintiff meets this initial burden, then the defendant has the burden of demonstrating that the exercise of jurisdiction would be unreasonable. (*Ibid.*) "If there is no conflicting evidence, whether the court can exercise personal jurisdiction is a legal question that we review de novo." (*Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 774.) That is, where no conflict in the evidence exists, " ' "the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record." ' " (*Snowney,* at p. 1062, quoting *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 (*Vons*).)

California courts may exercise personal jurisdiction on any basis consistent with the Constitutions of California and the United States. (Code Civ. Proc., § 410.10.) "The exercise of jurisdiction over a nonresident defendant comports with these Constitutions 'if the defendant has such minimum contacts with the state that the assertion of jurisdiction

does not violate " 'traditional notions of fair play and substantial justice.' " ' " (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268, citing *Vons, supra*, 14 Cal.4th at p. 444, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) "[T]he minimum contacts test asks 'whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and "fair" to require him to conduct his defense in that State.' " (*Snowney, supra,* 35 Cal.4th at p. 1061.) "The [minimum contacts] test 'is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present.' " (*Ibid.*)

"Although the existence of sufficient 'minimum contacts' depends on the facts of each case, the ultimate determination generally rests on some conduct by which the nonresident has purposefully availed himself of the privilege of conducting activities within the forum state to invoke its benefits and protections, and a sufficient relationship or nexus between the nonresident and the forum state such that it is reasonable and fair to require the nonresident to appear locally to conduct a defense." (*Muckle v. Superior Court* (2002) 102 Cal.App.4th 218, 227.) "This latter 'fairness' finding requires a balancing of the burden or inconvenience to the nonresident against the resident plaintiff's or petitioner's interest in obtaining effective relief, and the state's interest in adjudicating the particular dispute, which ultimately turns on the nature and quality of the nonresident's forum-related activity." (*Ibid.*)

Under the minimum contacts test, personal jurisdiction may be either general or specific. (*Snowney, supra*, 35 Cal.4th at p. 1062.) General personal jurisdiction exists when contacts with the forum state are " 'substantial . . . continuous and systematic,' " and

in such cases personal jurisdiction exists even as to causes of action unrelated to the nonresident's activities within the forum state. (*Vons, supra,* 14 Cal.4th at p. 445.) "If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the *specific* jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits [citation], and the 'controversy is related to or "arises out of" a defendant's contacts with the forum.' " (*Id.* at p. 446.)

When determining whether specific jurisdiction exists, courts consider the relationship among the defendant, the forum, and the litigation. (*Snowney, supra,* 35 Cal.4th at p. 1062.) " 'A court may exercise specific jurisdiction over a nonresident defendant only if: (1) "the defendant has purposefully availed himself or herself of forum benefits" [citation]; (2) "the 'controversy is related to or "arises out of" [the] defendant's contacts with the forum' "[citations]; and (3) " 'the assertion of personal jurisdiction would comport with "fair play and substantial justice." ' " ' " (*Ibid*.)

Applying the above law to the facts of this case, we conclude the family court lacked jurisdiction over child and spousal support matters. Moninder had worked in Virginia for more than six months before the proceedings commenced in California. He is registered to vote and has a driver's license in Virginia. He stated he has no property or other ties in California. The fact that Moninder stated he returns to California for family visits "once in a while" does not change our conclusion. Those contacts did not suffice for the court to assert personal jurisdiction over him for purposes of support orders or other financial issues. In *Titus v. Superior Court* (1972) 23 Cal.App.3d 792, the Court of

Appeal rejected California's assertion of personal jurisdiction over a nonresident husband who had sent his children to California to visit their mother: "[I]t would be unfair and unreasonable to hold that a nonresident parent has submitted himself to the jurisdiction of another state merely by the act of sending his children to that state temporarily for the purpose of visiting the other parent. It is a strong policy of the law to encourage the visitation of children with their parents. Such a policy should be fostered rather than thwarted." (*Titus*, at pp. 802-803; see also *Kumar* (1982) 32 Cal.3d 689, 703, fn. 19.)

We also point out that the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA; § 3400 et seq.), which we will conclude applies to the custody adjudication, *post*, "does not include an order relating to child support or other monetary obligation of an individual." (§ 3402, subd. (c).) This statutory language is clear and unambiguous: it expressly excludes such financial support issues from the purview of the UCCJEA. (Accord, *In re Marriage of Fitzgerald & King* (1995) 39 Cal.App.4th 1419, 1429 [deciding whether mother's stay away agreement was related to child custody or visitation, which is properly considered under the Uniform Child Custody Jurisdiction Act (UCCJA) predecessor to the UCCJEA, or "more like a financial support issue, which would bring the case outside the UCCJA"][3].)

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3 "Cases interpreting the UCCJA may be instructive in deciding cases under the [UCCJEA], except where the two statutory schemes vary." (*In re A.C.* (2005) 130 Cal.App.4th 854, 860.)

III.

The Family Court Had Jurisdiction over Child Custody and Visitation Matters

Paramdeep contends the family court had jurisdiction to decide her child custody and visitation claims under section 3402 because "[c]learly, under the findings of the court the children were not residents of any state for a period of six consecutive months immediately preceding the filing of the petition. Therefore, the court must then determine which state would have a more significant connection to the children and which state has more substantial evidence." Paramdeep argues the family court should have found California is the appropriate jurisdiction.

The UCCJEA is the exclusive method in California for determining subject matter jurisdiction in child custody proceedings involving other jurisdictions. (§ 3421, subd. (b); *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 490.) The term "child custody proceeding" is statutorily defined as "a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue." (§ 3402, subd. (d).) The purposes of the UCCJEA include avoiding jurisdictional competition and conflict, promoting interstate cooperation, litigating custody or visitation where the child and family have the closest connections, avoiding relitigation of another state's custody or visitation decisions, and promoting exchange of information and other mutual assistance between courts of sister states. (*In re C.T.* (2002) 100 Cal.App.4th 101, 106.)

With exceptions not applicable here, under section 3421, subdivision (a), California may assume jurisdiction to make an initial child custody determination only if any of four circumstances specified in that subdivision applies. First, California is the

child's "home state" on the date the proceeding commenced or was the home state of the child within six months before the proceeding commenced and a parent continues to live in California if the child is absent from the state. (§ 3421, subd. (a)(1).) " 'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. . . . A period of temporary absence of any of the mentioned persons is part of the period." (§ 3402, subd. (g).) Second, of particular importance here, *there is no home state* or a court of the child's home state "has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum" (§ 3421, subd. (a)(2)) *and both of the following are true*: *the child and at least one parent have a "significant connection" to California other than mere physical presence, and "substantial evidence" is available in California as to the child's care, protection, training and personal relationships*. (*Ibid*.) Third, all courts having jurisdiction under the prior two tests have declined to exercise jurisdiction on the ground California is the more appropriate forum. (§ 3421, subd. (a)(3).) Fourth, no other state has jurisdiction under any of the foregoing tests. (§ 3421, subd. (a)(4).)

"We are not bound by the family court's findings regarding subject matter jurisdiction, but rather 'independently reweigh the jurisdictional facts.' " (*In re A.C.*, *supra*, 130 Cal.App.4th at p. 860.) "Subject matter jurisdiction either exists or does not exist at the time the action is commenced and cannot be conferred by stipulation, consent, waiver or estoppel." (*In re A.M.* (2014) 224 Cal.App.4th 593, 598.)

"The requirements of due process of law are met in a child custody proceeding when, in a court having subject matter jurisdiction over the dispute, the out-of-state parent is given notice and an opportunity to be heard. Personal jurisdiction over the parents is not required to make a binding custody determination, and a custody decision made in conformity with due process requirements is entitled to recognition by other states." (*In re Marriage of Torres* (1998) 62 Cal.App.4th 1367, 1378; see also §§ 3406, 3408, 3421, subd. (c).)

Again, Paramdeep does not challenge the court's finding that the children had lived in Virginia from July to October 2013. Because under section 3402, subdivision (e), the child custody proceeding was commenced when it was filed on October 3, 2013, California was not the Children's "home state" because they had not lived in California during the preceding six consecutive months. (§ 3402, subd. (1).) But there is no evidence in the record that the family court considered the other section 3421 factors before concluding it lacked jurisdiction over child custody matters.

As applied here, section 3421 supports our conclusion the family court was required to exercise jurisdiction over the custody matters. Virginia was not the children's home state either because they had not lived there for the requisite six consecutive months before commencement of the action. The children therefore had no home state under section 3421, subdivision (a)(2). In fact, there is no claim, or evidence, that any other state either had jurisdiction over the child custody and visitation matter or declined to exercise it in deference to California. (§ 3421, subds. (a)(3), (a)(4).) Moreover, at the commencement of this action, the children were living with Paramdeep, who outlined in

her petition her "significant connections" to California: She had lived here with the children, who had spent almost all of their lives here and attended school here. Paramdeep was enrolled in college studies and previously was employed in California. Paramdeep presented "substantial evidence" that she cared for and protected the children in California, oversaw their athletic training, and took them to church and other activities. Her declaration satisfied the requirements of section 3421, subdivisions (a)(2)(A) and (a)(2)(B). We also conclude Moninder was accorded due process of law because, as he acknowledges, he received the summons and order to show cause in October 2013. (*In re Marriage of Torres, supra*, 62 Cal.App.4th at p. 1378.) Accordingly, we conclude the family court had jurisdiction to adjudicate the child custody and visitation portion of Paramdeep's petition, and we remand the matter to the court for that purpose.

DISPOSITION

The portion of the family court's order addressing Paramdeep Tank's petition for dissolution of the marriage and for child and spousal support is affirmed; the court's finding it lacked jurisdiction over the child custody and visitation matter is reversed, and the matter is remanded for the family court to adjudicate the child custody and visitation matter. Each party is to bear its own costs on appeal.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.